

FEB 16 1979-2 25 PM

*Matthews, Nowlin, Macfarlane & Barrett* INTERSTATE COMMERCE COMMISSION

*Attorneys at Law*

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I.C.C.  
FEE OPERATION BR.

9-047A090

Date FEB 16 1979

Fee \$50.00

ICC Washington, D. C.

*W. F. Nowlin (1902-1978)*

*Harper Macfarlane  
Grady Barrett  
of Counsel*

1500 Alamo National Building  
San Antonio, Texas 78205  
(512) 226-4211

February 13, 1979

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John M. Pinckney, III  
Marshall T. Stover, Jr.  
A. Chris Hennrichs  
Gilbert F. Vazquez*

CERTIFIED MAIL #164221  
RETURN RECEIPT REQUESTED

Secretary of Interstate Commerce Commission  
Washington, D.C. 20423

Re: Filing, pursuant to 49 U.S.C.A.,  
§20c, of lease documents relating  
to railroad cars

Dear Sir:

Pursuant to 49 U.S.C.A., §20c, and in accordance with 49 C.F.R., §116, enclosed for filing and recordation are the original executed Railroad Car Lease Agreement dated December 15, 1978, between RailTex, Inc., a Texas corporation, as Lessor, and Western Rail Road Company, a Texas corporation, as Lessee, together with two certified true copies thereof. Also enclosed is our check in the amount of \$50.00 in payment of your recordation fee.

The address of RailTex, Inc., Lessor, is 300 Elizabeth Road, San Antonio, Texas 78209, and the address of Western Rail Road Company is P.O. Box 811, New Braunfels, Texas 78130.

The lease agreement relates to 30 new rapid discharge, self-cleaning bottom dump rail cars manufactured by Ortner Freight Car Company, with A.A.R. mechanical designation No. HTS, AAR car-type code K340. 25 of the cars bearing Serial Nos. TRAX 1025 through 1049, both inclusive, are marked: Greyhound Leasing & Financial Corporation, Phoenix, Arizona, Owner and Conditional Seller; and 5 of the cars bearing Serial Nos. WRRRC (TRAX) 1020 through 1024, both inclusive, are marked Greyhound

*Matthews, Nowlin, Macfarlane & Barrett*

Page 2  
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Leasing & Financial Corporation, Phoenix, Arizona, Owner and  
Lessor, and Railtex, Inc., Lessee.

After filing and stamping, please return the enclosed  
original to this law firm.

Should you have any questions or need further informa-  
tion with respect to this matter, please contact the under-  
signed by collect telephone call at (512) 226-4211.

Thanking you for your cooperation, we are

Very truly yours,

MATTHEWS, NOWLIN, MACFARLANE & BARRETT

By: *Lovel R. Fuller*

LRF:fm  
Enclosures

RAILROAD CAR LEASE AGREEMENT

THIS AGREEMENT, No. 001, made and entered into DECEMBER 15, 1978, by and between RAILTEX, INC., a Texas corporation with its principal office and place of business in San Antonio, Texas, (herein called "LESSOR") and WESTERN RAIL ROAD COMPANY, a Texas corporation, (herein called "LESSEE").

WITNESSETH:

Description  
of Leased  
Cars:

1. LESSOR agrees to furnish to LESSEE, and LESSEE agrees to rent from LESSOR, the railroad cars shown on the Rider attached hereto and made a part hereof, and such additional Riders as may be added hereto from time to time by agreement of the parties and signed by their duly authorized representatives. Each Rider shall set forth a brief description of the car, or cars, covered thereby including such facts as: number of cars, car initials and numbers, the Association of American Railroads ("AAR") or Interstate Commerce Commission ("ICC") specifications, cubic capacity, truck capacity, delivery point, rental, term throughout which the cars shall remain in LESSEE's service, and other pertinent information that may be desired by both parties.

Use of  
Cars:

2. LESSEE agrees to use said cars under the following restrictions:

(a) The cars will be used and operated at all times in compliance with all lawful acts, rules, regulations and orders issued by the railroads on which the cars are operated, and government agencies.

(b) At the expiration or termination of the rental term of the particular Rider applicable to each such car described in such Rider, LESSEE at its expense shall cause said cars to be returned to LESSOR at San Antonio, Texas, or to such other point designated by LESSOR but at no cost to LESSEE greater than the charge for return to San Antonio, Texas.

(c) The cars shall be returned to LESSOR in the same, or as good, condition in which they were delivered to LESSEE except for ordinary wear and tear.

(d) The cars will not be altered by LESSEE in any way without prior written approval of LESSOR.

(e) Mechanical unloading assistance devices, such as a car shaker, shall be operated only for that period of time necessary to dislodge material from the car. Operation beyond the time the material is dislodged from the car

shall constitute unnecessary abuse by LESSEE of the car.

(f) LESSEE shall notify LESSOR in writing within five (5) days of each change in origin of the car so as to permit LESSOR to monitor individual car movements. This requirement is not to be construed as limiting in any way movements of the cars other than as set forth in paragraphs 2(a) and 2(h) hereof.

(g) The cars are intended for use in carrying aggregate type products, with individual rock segments not to exceed twelve (12) inches in cross section. The use of these cars for any other purpose is not permitted without prior written approval of LESSOR.

(h) The cars will be operated only within the United States of America.

**Rent:**

3. LESSEE agrees to pay LESSOR the monthly rental stated in the Rider covering said cars from the date each car is delivered as specified in the Rider, and until the cars are delivered to LESSOR upon expiration of the rental term specified in the Rider applicable to such car. Such rentals shall be paid to LESSOR in San Antonio, Texas, or such other place as LESSOR may hereafter direct in

writing. Payment will be made in advance on the first day of every month during the term, except that LESSEE shall pay in advance, on delivery of the cars, the pro rata of one month's rent for the period intervening between the date of delivery and the first day of the next succeeding month.

**Mileage:**

4. LESSEE shall pay LESSOR a mileage fee at the end of each month at the rate specified in the Rider. Mileage will be determined by the movement of the cars while covered by this Lease.

**Term of Lease:**

5. This Agreement shall be effective as of the date first set forth hereinabove and shall expire upon expiration of the rental term of the last car, or cars, covered hereunder. The rental term for each car shall be as shown in the Rider covering such car.

**Repair and Maintenance:**

6. LESSOR agrees to pay all costs of maintenance and repair to the cars described in the Rider, except for repairs required due to acts or omissions of LESSEE, shipper, consignee, agent or sublessee, or as otherwise provided below in this paragraph. LESSOR shall make all contractual arrangements for all repairs for accident damages not occurring on LESSEE's property, notwithstanding who is responsible for the costs thereof. LESSEE

shall notify LESSOR within three (3) full business days following knowledge of any damage to any of the cars. When cars are in a "BAD ORDER STATUS" for maintenance and/or repair, the rental charges on each car shall be suspended for each day in excess of five (5) days that the car has been continually in a "Bad Order" status, except payments will be immediately suspended if the car is "Bad Order" due to an accident. If any repairs are required as a result of the acts or omissions of LESSEE, its consignee, shipper, agent or sublessee or while on a railroad that does not subscribe to, or fails to meet its responsibility under, the Interchange Rules of the AAR, or while on any private siding or track or any private or industrial railroad, the rental charge shall continue during the rental period, and LESSEE agrees to pay LESSOR for the cost of such repairs, including transportation costs. LESSEE agrees that if by reason of such acts or omissions or while on a railroad that does not subscribe to, or fails to meet its responsibility under, the Interchange Rules of the AAR or on any private siding or track or any private or industrial railroad, any car is completely destroyed or in

the opinion of LESSOR such car's physical condition is such that it cannot be economically repaired to be operated in railroad service, LESSEE will pay LESSOR in cash the settlement value of such car within ten (10) days following receipt of payment from railroad. The term "settlement value" as used herein shall mean the valuation of such cars as provided for in the Interchange Rules of the AAR. LESSOR shall retain right to ownership of the car where consistent with Interchange Rules. If any of the cars shall be completely destroyed, or if the physical condition of any car shall become such that such car cannot economically be repaired to be operated in railroad service as determined by LESSOR then LESSOR at its option may cancel the lease as to such car as of the date on which such event occurred, or may substitute an equivalent car within a reasonable period of time, and in the event of such substitution, the substituted car shall be held pursuant to all the terms and conditions of this Agreement. LESSOR has the right to withdraw cars from service for the purpose of making nonsafety related repairs upon five (5) days' written notice to LESSEE. LESSOR shall have the right to substitute an equivalent car therefor.



Equivalent car shall mean a car of the same or greater (i) cubic capacity, (ii) load limit and (iii) the same unloading system. When damaged cars have been forwarded to a shop for repair, the excess mileage incurred by deviation from normal routing earned by such car to and from the shop shall be paid to LESSOR. LESSEE will bill LESSOR for all repair and maintenance expenses incurred by LESSEE which LESSOR has agreed to pay as provided herein.

Indemnity:                7.    LESSEE will indemnify LESSOR against any loss, damage, claim, expense (including attorney's fees and expenses of litigation) or injury imposed on, incurred by, or asserted against LESSOR arising, directly or indirectly, out of LESSEE's, its consignee's, agent's, shipper's, or any sublessee's use, lease, possession or operation of the cars occurring during the term of this Lease, or by the contents of such cars, however occurring, except any loss, liability, claim, damage or expense which is directly attributable to the fault or neglect of LESSOR, or for which a railroad or railroads have assumed full responsibility and satisfy such responsibility. All indemnities contained in this Agreement shall survive the termination hereof, however same shall occur.

Insurance:

8. LESSEE shall, at its own cost and expense, with respect to each car at all times maintain and furnish LESSOR with evidence of insurance against all risks assumed by LESSEE under paragraph 7 hereof (including, without limitation, physical damage insurance and liability insurance) protecting LESSOR, in such companies, in such amounts, and with such endorsements as LESSOR shall from time to time request as shown in Exhibit A. LESSEE's obligation to maintain insurance with respect to each car shall commence on the delivery date of such car and shall continue until the lease term thereof terminates and, if such car is required hereunder to be returned to LESSOR, until such return. LESSEE shall cooperate and, to the extent possible, cause others to cooperate with LESSOR and all companies providing any insurance to LESSEE or LESSOR or both with respect to the cars.

Additional  
Charges by  
Railroad:

9. LESSEE agrees to use the cars, upon each railroad over which the cars shall move, in accordance with the then prevailing tariffs to which each such railroad shall be a party; and, if the operation or movements of any of the cars during the term hereof shall result in any charges being made against LESSOR by any such railroad, LESSEE

shall pay LESSOR for such charges within the period prescribed by and at rates and under the conditions established by said then prevailing tariffs. LESSEE agrees to indemnify LESSOR against same and shall be liable for any switching, demurrage, track storage or detention charge imposed on any of the cars during the term hereof.

Right of  
Entry:

10. LESSOR shall have the right to enter the property of LESSEE or its agent, at LESSOR's own cost, and at all reasonable times for the purpose of making car inspections and repairs.

Reports:

11. LESSOR shall collect and retain all data necessary for making mileage, per diem and "Bad Order Status" calculations. The railroad reports will serve as prima facie evidence of the facts reported therein.

Payment  
of Taxes:

12. During the term of this Agreement, LESSEE shall, in addition to the rentals specified, pay all sales, use, rental and excise taxes, personal property taxes, assessment and other governmental charges, whatsoever, whether payable by LESSOR or LESSEE, on or relating to the cars leased hereunder. LESSEE shall be under no obligation to pay any such tax so long as it is being contested in good faith and by appropriate

administrative or legal proceedings and any expense incurred by LESSOR in which LESSEE concurs with respect to contesting the applicability of such sales tax, rental tax and use tax to this Agreement shall be for the account of LESSEE.

**Liens:**

13. LESSEE shall keep the cars free from any encumbrances or liens which may be a cloud upon or otherwise affect LESSOR's title.

**Marking  
of Cars:**

14. LESSEE shall keep all cars subject to this Lease free of any markings which might be interpreted as a claim of ownership, nor shall LESSEE change the identifying numbers.

**Subleasing:**

15. LESSEE will not sublease said cars or assign any of its rights hereunder, without written consent of LESSOR, except no consent will be required where cars are subleased to Parker Brothers & Co., Inc., or its wholly owned subsidiaries.

**Remedies:**

16. Upon the happening of any of the events of default as hereinafter defined, the LESSOR or its assignee may then, or at any time thereafter, take possession of the cars and any accessions thereto, wherever same may be found, and, at the election of the LESSOR or its assignee as the case may be, either:

(a) Declare the Agreement terminated, in which event all rights of the parties hereunder shall cease except only the obligation of LESSEE to pay accrued rentals and other charges to the date of retaking, or;

(b) Relet the cars, apply the proceeds of such reletting first to the expenses that may be incurred in the retaking and delivery of the cars to the new lessee, then to the payment of the rent and charges due under this Lease. LESSEE shall remain liable for any rents and charges remaining due after so applying the proceeds so realized, and LESSEE agrees to pay said deficit monthly as the same may accrue. LESSEE shall bear all costs involved in LESSOR retaking the cars, including transportation costs to San Antonio, Texas.

Default: 17. The happening of any of the following events shall be considered an "event of default":

(a) Nonpayment of LESSEE within thirty (30) days after the same becomes due of any installment of rental.

(b) Failure of LESSEE to comply with, or perform, any of the other terms and conditions of this Agreement within thirty (30) days

after receipt of written notice from LESSOR demanding compliance therewith and performance thereof.

(c) The appointment of a receiver or trustee in bankruptcy for LESSEE or for any of its property and the failure by such receiver or trustee to adopt and assume and agree to perform the obligations of LESSEE hereunder within thirty (30) days after such appointment.

Filing:

18. LESSOR intends to cause this Lease to be filed and recorded with the ICC in accordance with Section 20(c) of the Interstate Commerce Commission Act. LESSEE shall from time to time do and perform any other act, and execute, acknowledge, deliver, file, register and record any and all further instruments required by law, or requested by LESSOR, for the purpose of protecting its title and rights, or for the purpose of carrying out the intention of this Agreement, and LESSEE will promptly furnish to LESSOR certificates or other evidences of all such filing, registering and recording in form satisfactory to LESSOR. LESSOR shall promptly reimburse LESSEE for any out-of-pocket expenses it may so incur.

Inspection  
of Car:

19. Each of the cars shall be subject to LESSEE's inspection before delivery; and the

acceptance thereof by LESSEE shall be conclusive evidence (i) of the fit and suitable condition of such car for the purpose of transporting and commodities then and thereafter loaded therein and (ii) that it is one of the cars described in the Riders. Lease payments will commence on date of acceptance by the LESSEE. Refusal of acceptance by LESSEE will be based only upon LESSEE's conclusive demonstration that the car does not conform to subparagraphs (i) and (ii) of this paragraph 19.

Disclaimer of  
Warranties:

20. LESSOR LEASES THIS EQUIPMENT, AS IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO: (a) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY CARS INCLUDING BUT NOT LIMITED TO THEIR VALUE, CONDITION, DESIGN OR OPERATION, (b) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (c) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE.

Renewal:

21. At the expiration of the initial rental term, LESSEE shall have the option to renew this Agreement covering those cars listed in the Rider for a period of five (5) years from the date of the initial delivery of the cars. Notice of the exercise of this option shall be given, in writing, by LESSEE to LESSOR at least ninety (90) days prior to the expiration of the rental term of the car or cars covered hereunder.

Miscellaneous:

22. It is mutually agreed that the time of payment of rentals is of the essence of this Agreement and that this Agreement and any Rider now and hereafter entered into is subject and subordinate to any Lease Agreement from the owners of the cars subleased hereunder, Security Agreement or Conditional Sale Agreement on the cars heretofore or hereafter leased hereunder and to the rights of any Trustee under any Equipment Trust heretofore or hereafter established by LESSOR.

Notice:

23. All notices provided for herein, as well as all correspondence pertaining to this Agreement, shall be considered as properly given if given in writing and delivered personally or sent by registered or certified mail, return receipt requested.



The respective addresses for notice shall be the addresses of the parties given in writing at the execution of this Agreement. Such addresses may be changed by either party giving written notice thereof to the other.

Governing  
Law:

24. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas, in which state it has been executed and delivered.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their respective corporate officers and duly attested, as to the date first above written.

RAILTEX, INC. (LESSOR)

(Corporate Seal)

ATTEST:

Samuel L. Floom  
Secretary

By Bruce M. Albo  
President

WESTERN RAIL ROAD COMPANY (LESSEE)

(Corporate Seal)

ATTEST:

D. B. Parker  
Secretary

By [Signature]  
(Title)

STATE OF TEXAS     X  
                              X  
COUNTY OF BEXAR    X

BEFORE ME, the undersigned authority, on this day personally appeared Bruce M. Flohr, President of RailTex, Inc., a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said Corporation.

23<sup>rd</sup> GIVEN under my hand and seal of office on this the  
day of January, A.D. 1979.

Susan E. Tyree  
Notary Public in and for Bexar County,  
Texas

SUSAN E. TYREE  
Notary Public, Bexar County, Texas

STATE OF TEXAS     X  
                              X  
COUNTY OF HARRIS   X

BEFORE ME, the undersigned authority, on this day personally appeared William R. Parker, Jr., President of Western Rail Road Company, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said Corporation.

29TH GIVEN under my hand and seal of office on this the  
day of JANUARY, A.D. 1979.

John Mills  
Notary Public in and for Harris County,  
Texas  
JOHN MILLS

RAILTEX, INC.

Rider No. 01

To Master Agreement No. 001

It is hereby agreed that, effective DECEMBER 15, 19 78, this Rider shall become a part of Master Car Agreement No. 001 between RailTex, Inc. and Western Rail Road Company dated DECEMBER 15, 19 78, and the cars described herein shall be placed in service, subject to the terms set forth below:

CAR INITIAL NUMBERS: WRC 1020 THRU 1049, both inclusive

CAR OWNERS MARKS: RailTex, Inc.

CLASS OF CAR: HTS/K340

NUMBER OF CARS: Thirty (30)

CAPACITY OF CARS: 2300 cubic feet, 100 tons

DELIVERY POINT: Stonetown, Texas

TERM: 12 months from delivery date of last car

CERTIFICATION OF INSPECTION AND ACCEPTANCE: Exhibit "A" attached hereto and made a part hereof

TERMS OF RENT FOR ORIGINAL TERM: \$489.00 per car, per month, plus \$0.0420 per operating mile

TERMS OF RENT FOR EXTENDED TERM: For each one percent (1%) or fraction thereof of the increase of the AAR rate for labor in car repair billing, the original term mileage rate will increase \$0.0004 per mile throughout the extended term of the Lease

(SEAL)

ATTEST:

Janet Lennie Flohr  
Secretary

RAILTEX, INC. (LESSOR)

By

Bruce M. Adair  
President

(SEAL)

ATTEST:

D. R. Parker  
Secretary

WESTERN RAIL ROAD COMPANY (LESSEE)

By

W. R. Parker  
President

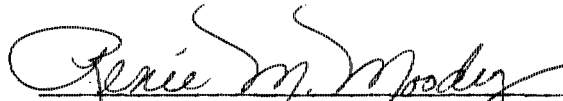
10137  
RECORDATION NO. .... Filed 1425  
FEB 16 1979-2 25 PM  
INTERSTATE COMMERCE COMMISSION

CERTIFICATE OF NOTARY PUBLIC  
PURSUANT TO 49 C.F.R., §1116.3(b)

STATE OF TEXAS     X  
                              X  
COUNTY OF BEXAR   X

I, the undersigned Notary Public in and for Bexar County, Texas, do hereby certify that I have compared the attached copy of a Railroad Car Lease Agreement dated December 15, 1978, executed by RailTex, Inc., a Texas corporation, as Lessor, and Western Rail Road Company, a Texas corporation, as Lessee, with the original document and that it is a true and correct copy thereof in all respects.

Dated: February 8, 1979.

  
\_\_\_\_\_  
Notary Public in and for Bexar County,  
Texas

My Commission Expires June 1, 1980.

Interstate Commerce Commission

Washington, D.C. 20423

3/5/79

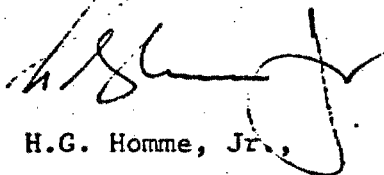
OFFICE OF THE SECRETARY

Lionel R. Fuller  
Matthews, Nowlin, MacFarlane & Barrett  
1500 Alamo Natl Bld.  
San Antonio, Texas 78205

Dear Sir:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on 2/16/79 at 2:25pm ,  
and assigned recordation number(s) 10137

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)